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FILED**DEC - 4 2007**

3 **UNITED STATES BANKRUPTCY COURT**
 4 **EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES BANKRUPTCY COURT**EASTERN DISTRICT OF CALIFORNIA**

7 In re) Case No. 05-24428-D-13L
 8 JOHN LOGAN,) Docket Control No. MWB-5
 9)
 10 Debtor.)
 11) DATE: November 6, 2007
 12) TIME: 1:00 p.m.
 13) DEPT: D (Courtroom 34)
 14)

15 **MEMORANDUM DECISION ON SECOND MOTION FOR APPROVAL OF**
 16 **ATTORNEYS FEES AND COSTS PAYABLE**

17 This memorandum decision is not approved for publication and may
 18 not be cited except when relevant under the doctrine of law of
 19 the case or the rules of claim preclusion or issue preclusion.

20 John Logan (the "debtor") filed a voluntary petition for
 21 relief under Chapter 13 of the United States Bankruptcy Code
 22 ("Code") on April 18, 2005. Throughout this case Mark W. Briden,
 23 Attorney at Law ("Counsel") has acted as counsel for the debtor
 24 and this is Counsel's second fee motion. Through this second fee
 25 motion (the "Motion"), Counsel seeks additional compensation in
 26 the amount of \$1,833 in fees and \$18.30 in costs. Although no
 27 party has filed opposition to the Motion, the court has an
 28 independent duty to review all requests for compensation and to
 29 determine their reasonableness.

30 Section 330 of the Code sets out the standard for which
 31 courts should determine the reasonableness of attorney's fees.
 32 This section provides that in determining the amount of
 33 reasonable compensation the court should consider the nature,

1 extent, and value of the services rendered, taking account of all
2 relevant factors, including the time spent on the services, the
3 rates charged for the services, and the customary compensation of
4 comparably skilled attorneys in other cases. Reasonableness is
5 determined by looking at the nature, extent and value of the
6 services rendered. See In re Eliapo 298 B.R. 392, 401 (9th Cir.
7 BAP 2003).

8 In determining reasonableness under § 330(a)(3)(D) of the
9 Code the court is to consider whether services were performed
10 within a reasonable amount of time commensurate with the
11 complexity, importance, and nature of the problem, issue, or task
12 addressed. One component of this analysis requires the court to
13 look at what other competent Chapter 13 practitioners would
14 charge for a Chapter 13 case similar in complexity.

15 "The burden is upon the applicant to demonstrate that the
16 fees are reasonable." In re Basham, 208 B.R. 926, 931-932 (9th
17 Cir. BAP 1997) [citing Hensley v. Eckerhart, 461 U.S. 424, 437,
18 103 S.Ct. 1933, 1941 (1983)].

19 At the outset the court notes that Counsel represents
20 Chapter 13 debtors on a regular basis and that there is nothing
21 out of the ordinary about this Chapter 13 case. Rather, the
22 debtor's case is a routine, non-business Chapter 13 proceeding.
23 Further, the court notes that when considering the original fee
24 that the debtor paid, along with the fees already approved under
25 Counsel's prior fee motions, Counsel has already been paid a
26 total of \$3,528.50 in this case.

27 The court notes that under the Guidelines for Payment of
28 Attorneys Fees in Chapter 13 Cases Applicable in the Eastern

1 District of California (the "Fee Guidelines") in effect when this
2 case was filed, the allowed "opt-in" fee for a Chapter 13 case
3 was \$2,500 and \$4,000 for a business case. Attorneys can "opt-
4 out" of the Fee Guidelines and Counsel has done so here.

5 Although Counsel has "opted-out", there is a general presumption
6 that the attorneys fees set in the Fee Guidelines for those who
7 "opt-in" is sufficient to cover the basic attorney services
8 necessary in a routine Chapter 13 case. See Eliapo, supra at
9 599. In fact, many competent Chapter 13 attorneys use the "opt-
10 in" procedure provided for in the Fee Guidelines and provide full
11 representation for the fixed fee.

12 Turning now to Counsel's fee request, the court finds that
13 Counsel's hourly rate (\$195 per hour) is reasonable and the court
14 does not have an issue with the quality of Counsel's services.
15 With that said, the court does have a real concern whether
16 Counsel's fee request is reasonable.

17 There are numerous time entries that are excessive. By way
18 of example only, on June 20, 2005 Counsel charged 1.8 hours for
19 "Formulation and preparation of Docket Control MWB-2 Motion For
20 Order Approving First Amended Chapter 13 Plan." This motion is a
21 three-page, boilerplate pleading. Then on July 15, 2005 Counsel
22 charged 1.6 hours for "Formulation and Preparation of Docket
23 Number MWB-2 Motion to Confirm Second Amended Plan and Notice."
24 This motion is a two-page, boilerplate pleading. Then on
25 September 7, 2005 Counsel charged 1.6 hours for "Formulation and
26 Preparation re Docket Number MWB-4 Notice and Motion for Order
27 Confirming Third Amended Chapter 13 Plan." Except for two
28 sentences in paragraph 4 of this motion, it is identical to the

1 motion prepared by Counsel on June 20, 2005. A review of these
2 charges leads the court to one of two conclusions. One, that
3 Counsel is horribly inefficient, or alternatively the time
4 charged is grossly inflated. In either event these charges are
5 clearly excessive and unreasonable.

6 However, rather than dissect Counsel's fee request line-by-
7 line, or task-by-task, the court chooses to review the fee
8 request on a global basis to determine reasonableness. Although
9 Counsel has opted out of the Fee Guidelines, the fixed fee
10 charged by many competent Chapter 13 practitioners is used as a
11 guide as to what is reasonable compensation for handling a
12 routine chapter 13 case.

13 The court finds the total fees requested in this case exceed
14 the reasonable value of services rendered when compared to what
15 other competent practitioners would charge for a Chapter 13 case
16 of similar complexity. In this routine Chapter 13 case Counsel
17 has already been paid \$3,528.50 which is more than 140% of the
18 fixed fee allowed if an attorney "opts-in" under the Guidelines.

19 The burden is on Counsel to demonstrate that the fees
20 requested are reasonable. The Motion is void of any analysis or
21 discussion as to the reasonableness of the fees requested.
22 Accordingly, Counsel has not met his burden demonstrating the
23 fees requested are reasonable. On the contrary, and for the
24 reasons state, the court finds the aggregate fee requested in
25 this case is excessive and unreasonable.

26 For the above reasons the Court finds that Counsel has
27 already been paid reasonable compensation for the work performed.

28 / / /

1 Accordingly, the Motion will be denied as the fees requested in
2 the Motion exceed the reasonable value of the services rendered.

3 A separate order will be entered consistent with this
4 memorandum decision.

5 Dated: DEC -4 2007


Robert S. Bardwil
United States Bankruptcy Judge

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1 Certificate of Service

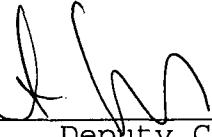
2 I certify that on DEC - 4 2007 a copy of the foregoing
3 document was mailed to the following:

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14 FOR THE COURT
15 RICHARD G. HELTZEL
16 CLERK, U.S. BANKRUPTCY COURT

17 By: _____
18 
19 Deputy Clerk